



# OFFICE OF THE POLICE COMMISSIONER

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June 4, 2012

Memorandum for: Deputy Commissioner, Trials

Re: **Police Officer Ricardo Richards**

Tax Registry No. 921706

26 Precinct

Disciplinary Case Nos. 82404/06 & 85378/09

The above named member of the service appeared before Assistant Deputy Commissioner Claudia Daniels-Depeyster on October 28, 2010 and was charged with the following:

## **DISCIPLINARY CASE NO. 82404/06**

1. Said Police Officer Ricardo Richards, assigned to the 107 Precinct, on or about March 5, 2006, while off-duty, having been involved in a police incident at a location within the confines of the 107 Precinct known to the Department, did thereafter fail to remain at the scene of said incident as required and/or did fail to request the response of a patrol supervisor as required, in that Respondent left said location, after Respondent was advised by a person known to the Department that a larceny had taken place at that location, and after Respondent had taken police action in regard to that larceny.

**P.G. 212-32, Page 1, Paragraphs 1 & 2**

## **OFF DUTY INCIDENTS**

2. Said Police Officer Ricardo Richards, assigned to the 107 Precinct, on or about March 5, 2006, while off-duty, did wrongfully engage in conduct prejudicial to the good order, efficiency and discipline of the Department by failing to take proper police action, in that Respondent, having been involved in a police incident at a location within the confines of the 107 Precinct known to the Department, did fail to effect a proper arrest of a juvenile known to the Department and/or did fail to detain and make proper notifications regarding a juvenile known to the Department and/or did fail to properly invoice property and/or did fail to prepare a Stop, Question and Frisk report after having detained a juvenile known to the Department.

**P.G. 203-10, Page 1, Paragraph 5**

## **PUBLIC CONTACT – PROHIBITED CONDUCT**

**P.O. RICARDO RICHARDS**

**DISCIPLINARY CASE NO. 85378/09**

1. Said Police Officer Ricardo Richards, while assigned to the 26 Precinct, on or about and between 2006 and September 28, 2008 did wrongfully engage in conduct prejudicial to the good order, efficiency or discipline of the Department in that said Police Officer did maintain insurance for said Police Officer's personal vehicle using an address in [REDACTED] County when in fact said Police Officer resided in [REDACTED] County.  
(As amended)

**P.G. 203-10, Page 1, Paragraph 5**

**PUBLIC CONTACT – PROHIBITED CONDUCT  
GENERAL REGULATIONS**

2. Said Police Officer Ricardo Richards, assigned to the 26 Precinct, on or about August 4, 2007, did wrongfully engage in conduct prejudicial to the good order, efficiency or discipline of the Department in that said Officer did file a claim for glass damage with said officer's insurance company, while insuring his vehicle in a County other than that in which said vehicle was predominately garaged.

**P.G. 203-10, Page 1, Paragraph 5**

**PUBLIC CONTACT - PROHIBITED CONDUCT  
GENERAL REGULATIONS**

**N.Y.S. Penal Law 176.05(1)**

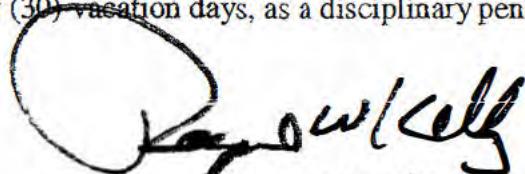
**N.Y.S. Insurance Law 403(a) & (b)**

**INSURANCE FRAUD**

**INSURANCE FRAUDS PREVENTION**

In a Memorandum dated June 1, 2011, Assistant Deputy Commissioner Daniels-Depeyster found the Respondent Guilty in part of Specification Nos. 1 and 2 in Disciplinary Case No. 82404/06 and Guilty of Specification No. 1 in Disciplinary Case No. 85378/09. Assistant Deputy Commissioner Daniels-Depeyster dismissed Specification No. 2 in Disciplinary Case No. 85378/09. Having read the Memorandum and analyzed the facts of this matter, I approve the findings, but disapprove the penalty.

The overall nature of the total misconduct committed by the Respondent in both of the above referenced matters does not warrant a period of dismissal probation. Therefore, the Respondent is to forfeit thirty (30) vacation days, as a disciplinary penalty.



Raymond W. Kelly  
Police Commissioner



POLICE DEPARTMENT

June 1 , 2011

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Ricardo Richards  
Tax Registry No: 921706  
26 Precinct  
Disciplinary Case Nos. 82404/06 & 85378/09

The above-named member of the Department appeared before me on October 28, 2010, January 3, 2011, and January 18, 2011, charged with the following:

Disciplinary Case No. 82404/06

1. Said Police Officer Ricardo Richards, assigned to the 107 Precinct, on or about March 5, 2006, while off-duty, having been involved in a police incident at a location within the confines of the 107 Precinct known to the Department, did thereafter fail to remain at the scene of said incident as required and/or did fail to request the response of a patrol supervisor as required, in that Respondent left said location, after Respondent was advised by a person known to the Department that a larceny had taken place at that location, and after Respondent had taken police action in regard to that larceny.

P.G. 212-32, Page 1, Paragraphs 1 & 2 – OFF DUTY INCIDENTS

2. Said Police Officer Ricardo Richards, assigned to the 107 Precinct, on or about March 5, 2006, while off-duty, did wrongfully engage in conduct prejudicial to the good order, efficiency and discipline of the Department by failing to take proper police action, in that Respondent, having been involved in a police incident at a location within the confines of the 107 Precinct known to the Department, did fail to effect a proper arrest of a juvenile known to the Department and/or did fail to detain and make proper notifications regarding a juvenile known to the Department and/or did fail to properly invoice property and/or did fail to prepare a Stop, Question and Frisk report after having detained a juvenile known to the Department.

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT-PROHIBITED CONDUCT

Disciplinary Case No.85378/09

1. Said Police Officer Ricardo Richards, while assigned to the 26<sup>th</sup> Precinct, on or about and between 2006 and September 28, 2008 did wrongfully engage in conduct prejudicial to the good order, efficiency or discipline of the Department in that said Police Officer did maintain insurance for said Police Officer's personal vehicle using an address in [REDACTED] County when in fact said Police Officer resided in [REDACTED] County. (As amended)

P.G. 203-10, Page 1, Paragraph 5 PUBLIC CONTACT PROHIBTED CONDUCT GENERAL REGULATIONS

2. Said Police Officer Ricardo Richards, assigned to the 26<sup>th</sup> Precinct, on or about August 4, 2007, did wrongfully engage in conduct prejudicial to the good order, efficiency or discipline of the Department in that said Officer did file a claim for glass damage with said officer's insurance company, while insuring his vehicle in a County other than that in which said vehicle was predominately garaged.

P.G. 203-10, Page 1, Paragraph 5 PUBLIC CONTACT PROHIBTED CONDUCT GENERAL REGULATIONS  
N.Y.S. Penal Law § 176.05 (1) – INSURANCE FRAUD  
N.Y.S. Insurance Law §§ 403(a) & (b) INSURANCE FRAUDS PREVENTION

The Department was represented by Pamela Naples, Esq., Department Advocate's Office, and Respondent was represented by Craig Hayes, Esq.

Respondent, through his counsel, entered a plea of Not Guilty to the subject charges in Disciplinary Case No. 82404/06. Respondent entered a plea of Guilty to Specification No. 1 of Disciplinary Case No. 85378/09. The Department made a motion to dismiss Specification No. 2 of Disciplinary Case No. 85378/09. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Disciplinary Case No. 82404/06

Respondent is found Guilty in part in Specification Nos. 1 and 2.

Disciplinary Case No. 85378/09

Respondent, having pleaded Guilty, is found Guilty of Specification No. 1. The Department's motion to dismiss Specification No. 2 is granted.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Sergeant Martin Merensky, George Mikhaylov and Deputy Inspector Charles Talamo as witnesses.

Sergeant Martin Merensky

Merensky is a 25-year member of the Department currently assigned to the 107 Precinct where he is a patrol sergeant. He testified that from about November 2002 to December 2009 he was the Assistant Integrity Control Officer (ICO). He explained that his duties included insuring that officers were doing what they were supposed to be doing such as showing up for work on time, answering radio runs, reporting dispositions of jobs, correctly filing out overtime slips, not abusing overtime and essentially following Department rules. Merensky further explained that if he uncovered that an officer was not doing his duties as Assistant ICO, he could issue a verbal warning, a minor violation or a Command Discipline for an infraction.

Merensky testified that there came a time when he had to investigate an incident involving Respondent. On March 15, 2006, he was working as Assistant ICO in the 107 Precinct when a "10-13" [officer needs assistance] came over the radio. The call came from a barbershop on Kissena Boulevard in Queens. Respondent was involved in an off-duty incident and he was brought back to the station house along with the other person involved in the incident. Merensky's investigation revealed that Respondent, while off-duty, tried to make an apprehension of an individual. He explained that his investigation also revealed that Respondent was involved in another off-duty incident on March 5, 2006 which corresponded to the March 15 incident, but the March 5 incident had not been reported to anyone. He further explained that Respondent was not found guilty of any misconduct for his actions on March 15, 2006. However, with respect to March 5, 2006, Merensky had to conduct an investigation which involved obtaining the Roll Call, command logs and other Department documents. He recommended that a Command Discipline be issued to Respondent for failing to report the off-duty incident on March 5, 2006 to anyone and for failing to follow proper guidelines with respect to the incident. Merensky said that Respondent did not prepare a 61 [Complaint Report], nor a Stop, Question and Frisk report for his actions on March 5, 2006.

Merensky said that it was his understanding that Deputy Inspector Talamo and the duty captain spoke to Respondent. He was not present for that interview. He said that Talamo also reviewed a videotape. Talamo informed him that he observed a petty larceny committed on March 5 after review of the videotape. Talamo also informed him that Respondent admitted during his interview that he had another off-duty incident that had occurred on March 5, 2006, but that he did not report it to anyone. In addition the

two incidents involved Respondent and the same individual, a 15-year old juvenile named Person A.

Merensky stated that Talamo substantiated the allegation that Respondent failed to make notifications involving an off-duty incident. He offered Respondent a penalty of the forfeiture of five vacation days but Respondent refused the offer and opted for a Department trial instead. Merensky said that he then had to conduct further investigation including interviewing witnesses and present his case to the Department Advocate's Office to determine if the case will proceed with Charges and Specifications. Merensky testified that he interviewed the barbershop owner George Mikhaylov. He learned from interviewing him that he was not present on March 15 when everyone went back to the station house. He was present on March 5. Mikhaylov viewed a videotape with Respondent. They then confronted the alleged suspect (identified as Person A) outside of the barbershop. Respondent identified himself and displayed his shield and Department identification card and told Person A that he was not free to leave.

Merensky also testified that he learned that Respondent stopped a group of individuals. He stopped the apparent suspect, Person A. He directed another individual to return the stolen cell phone and that person walked around the block and returned with the stolen cell phone. Respondent then took possession of the cell phone and handed it to the owner of the barbershop. At this point, Respondent made no notifications to the Department. It was determined that Respondent viewed a slowed down version of the videotape of the incident. Merensky said Respondent was able to see the person he stopped actually steal the cell phone on the videotape. Respondent responded to this information by getting his hair cut, telling Mikhaylov if there was any problem to call the

police and Respondent went home. Merensky explained that the stolen cell phone was missing the SIM card which rendered it useless. The stolen cell phone actually belonged to a barbershop customer and the owner turned the cell phone over to that third party.

According to Merensky, the person who owned the cell phone became upset when he learned that the cell phone was missing the SIM card. He called the police to make a report. Two police officers responded to the barbershop but informed the customer that they could not take a report because he did not have any paperwork. He was advised that if he obtained the paperwork, the police could respond to his residence and take a report at that time.

Merensky testified that he conducted an official Department interview of Respondent. Respondent admitted that he took police action on March 5, 2006 when he identified himself, detained the young man and threatened him with arrest if the cell phone was not returned. Respondent admitted that he made no notifications about the incident and failed to request the response of a patrol supervisor. Merensky said that Respondent also failed to remain at the scene as required. He explained that Respondent viewed a tape where he observed a crime of theft being committed. Respondent was also in possession of stolen property which he gave to the store owner who was not the rightful owner of the cell phone. Merensky also stated that Respondent failed to prepare a Stop, Question and Frisk report after detaining Person A. He said that Respondent had no valid excuse for his actions.

During cross-examination, Merensky acknowledged that he and Talamo were familiar with Respondent who worked at the 107 Precinct for some time. He agreed that

he was aware of the penalty recommendation of a Schedule A- Command Discipline with five days. He stated that he thought the penalty was fair given the incident.

Merensky admitted that police officers have to take police action at times, even when off-duty. He agreed that if they do not take police action, they can face possible discipline. Merensky agreed that Respondent stopping Person A was not misconduct. He also agreed that threatening to arrest Person A was not misconduct either. He acknowledged that Respondent was not charged with using unnecessary force against Person A. He explained that had Respondent viewed the tape from the store at the correct speed, he would have observed the theft and an arrest would have ensued and Respondent should have called 911 for an on duty police officer to make the arrest.

Merensky acknowledged that he was part of a lawsuit filed by Respondent where he and other members of the Police Department were sued. He admitted that he thought the lawsuit was ridiculous. He explained that he was just an assistant ICO doing his job. Merensky stated that he was unaware that the lawsuit was settled for \$75,000.00. He said that he was never asked to contribute to the settlement. Merensky was asked whether he harbored any animosity toward Respondent after being accused of retaliation and other serious claims. Merensky said that he had no animosity toward Respondent. He explained that he was indemnified by the City of New York, has no animosity but still believes the lawsuit was ridiculous.

During questioning by the Court, Merensky said that initially Respondent was offered a Schedule B Command Discipline as a penalty in this matter, but Talamo reduced it to a Schedule A Command Discipline with five days.

George Mikhaylov

Mikhaylov is a construction worker [REDACTED]. In March 2006, Mikhaylov testified that he had a barbershop located in Kissena, Queens. He stated that he knows Respondent because he was a client in his barbershop. Mikhaylov stated that he could not recall that in March 2006 he knew if Respondent was a police officer, he stated that he is aware today that he is a police officer. On March 5, 2006, Mikhaylov said he was working on that date. Respondent came into the barbershop to get his hair cut. As Respondent was getting his hair cut, another client was also getting his hair cut. The other client screamed out that his cell phone was stolen in the shop. There were other workers and clients in the barbershop at the time. Mikhaylov said he immediately went to the surveillance camera to look at the video and see if they could see anything on the video.

Mikhaylov testified that he showed the video to the workers himself and the clients who were in the barbershop. Everyone was able to see in the video that a young guy was seen pulling the cell phone out of the pocket. Mikhaylov said he believed Respondent was there during the time that they were watching the video. After viewing the video, someone stated that the guy who took the cell phone was downstairs. Mikhaylov said he and Respondent immediately went downstairs. Mikhaylov said he could not hear what was said, but Respondent spoke to the male and shortly thereafter the cell phone was returned. Mikhaylov said he was given the phone, he went upstairs and returned it to the client. The client stated that the SIM card was missing so they decided to call the police. Two police officers arrived; they viewed the video and made a report. Mikhaylov said he believed Respondent had left at that time.

During cross-examination, Mikhaylov acknowledged that he did not recall where Respondent was when he handed the cell phone back to the client. Mikhaylov was asked at the time that the client got his phone back, did he want to make an arrest and Mikhaylov stated yes. Mikhaylov said he could not recall if when the phone was taken back from the thief, whether the client was at the barbershop or whether the client returned to the barbershop at a later time.

Mikhaylov was asked whether the person taking the phone was visible the first time they watched the video or whether they had to watch it several times. He stated that it was visible the first time and the second time. He explained that the video showed the person take the cell phone from the jacket pocket. Mikhaylov said it was possible that they may have had to use slow motion on the video. He could not recall if he watched the video with Respondent one time or more than one time. Mikhaylov testified that the next time he saw the guy who stole the cell phone was outside of the building. When he was confronted, he handed the phone to Mikhaylov.

During redirect examination, Mikhaylov acknowledged that he was outside along with Respondent and some other person. He could not recall when they encountered the person who stole the cell phone.

During questioning by the Court, Mikhaylov stated that he could not recall whether Respondent was present when the two police officers came to the scene. He stated that the cell phone was returned to the client the same day that it was stolen.

Deputy Inspector Charles Talamo

Talamo is a 25-and-a-half-year member of the Department currently assigned to Transit Bureau Queens. He testified that he was the Borough Commander and his duties included overseeing the running of Transit commands in Queens. He explained that he oversees two districts, District 20 which is one of the largest Transit Districts in the city, as well as Transit District 23 which is one of the smallest districts in the city. His duties run from the maintenance of the facility itself, to planning the course for the reduction of crime, as well as the integrity and performance of all subordinate members of both commands. He further explained that he has been the Commander since July 2009.

Talamo testified that from October 2003 until November 2006 he was Commanding Officer of the 107 Precinct. He explained that his duties were essentially the same except on a smaller scale. He stated that he is familiar with Respondent and that he was assigned to the 107 Precinct while he was the Commanding Officer there. On March 15, 2006 while the Commanding Officer, Talamo stated that he became involved in an investigation involving Respondent. He explained that Patrol Supervisor Sergeant Goodstein informed them that one of the members of the command, Respondent, was involved in an off-duty arrest situation. Goodstein informed him that Respondent was in the barbershop somewhere on Kissena Boulevard when he was off-duty and had an occasion to arrest a juvenile for stealing a cell phone. The theft of the cell phone had occurred ten days earlier on March 5, 2006. Talamo explained that he learned this information from the duty captain and the patrol supervisor who were conducting the investigation. Talamo said he instructed Goodstein to follow the protocol for an off-duty

incident. He wanted him to inform the duty captain of what was going on and to have an investigation initiated into the validity of the arrest.

Talamo stated that once it was determined by the duty captain that the circumstances of the arrest were proper, he gave instructions that the arrest be properly processed. Talamo concurred with the findings of the Duty Captain that the arrest on March 15, 2006 was proper. He concurred based on the fact that there was an open complaint for a stolen cell phone that had occurred at the same location. In addition, the duty captain and the sergeant had spoken to a barber who was a witness to the theft, and he also reviewed the video of the apprehension.

With respect to the March 5, 2006 incident, Talamo testified that he gathered information that Respondent was at the barbershop off-duty and that there were other patrons at the location. One of the patron's cell phone was taken and both the barber and Respondent realized this fact. They noted that a juvenile (identified as Person A) who was in the barbershop took the cell phone and had fled. Talamo was informed that sometime later in the evening, Respondent encountered Person A outside of the barbershop and stopped him. Person A, when stopped, made statements that the cell phone was thrown into the bushes. Person A then went to that location, retrieved the cell phone and gave it to Respondent. It was alleged that Respondent uttered words to the effect telling Person A to go home. Respondent then reentered the barbershop and gave the cell phone to the barber because the complainant was no longer at the location. Respondent also told the barber to inform the complainant to file a complaint. Respondent also told the barber that once he gave the phone back to the complainant to let him know. Talamo testified that Respondent did not call 911 on March 5, 2006 nor informed the Department that he had

taken off-duty police action. Respondent also failed to complete paperwork and that he had an absolute duty to do so. He explained that because Respondent took police action by apprehending and stopping a juvenile by force; he searched him and recovered evidence that he was supposed to prepare a report.

Talalmo said that he had an opportunity to speak to Respondent on March 15, 2006. He informed Respondent in sum and substance that his actions on March 15, 2006 were justified and authorized and that he could process the arrest. However, there were issues of serious misconduct stemming from his failures on the incident date of March 5, 2006. He advised Respondent that he would be investigated and that he should consult a representative because there would be disciplinary action stemming from his misconduct on March 5, 2006. He informed Respondent that if the juvenile had gone home and complained to his mother or called 911 and mentioned that a police officer stopped him, searched him and took property from him and then sent him on his way, that a very serious complaint would have been initiated and that Respondent would have been subject to more severe discipline.

After review of this matter, Talamo testified that he instructed his ICO to issue Respondent a Command Discipline. He explained that since Respondent witnessed a crime he did not identify himself or inform the Department that he was involved in an off-duty incident and he failed to follow proper protocol, that discipline was warranted. He explained that Respondent did not have to take police action other than to call 911. But once he opted to take police action and he apprehended the juvenile, he had to fulfill the rest of the mandates of both the Criminal Procedure Law and the Family Court Act and the Department rules and regulations. He further explained that Respondent

followed none of those procedures and instead made poor decisions to adjudicate the law on his own.

During cross-examination, Talamo acknowledged that Respondent had no duty to take police action other than to call 911. He acknowledged that if Respondent had viewed the video tape and simply called 911 he would not have received discipline. He agreed that Respondent was not charged with using excessive force. Talamo also agreed that serious misconduct can be addressed with a penalty of a Command Discipline in certain situations.

Talamo acknowledged that he has been Commanding Officer of several commands including the 107 Precinct and the 100 Precinct. He was Executive Officer of the 101 Precinct and that he was Commanding Officer of the Auto Crime Division as well. He agreed that he has been involved in several investigations involving misconduct of police officers. During the course of these investigations, he had to make a decision as to what type of discipline would be warranted. He acknowledged that the maximum penalty for a Command Discipline is ten vacation days. Talamo agreed that there were occasions where the misconduct involved a penalty which exceeded a Command Discipline. He stated that there were occasions where he had to suspend members or modify them and see that they receive Charges and Specifications. Talamo explained that there are some cases where suspension is the required penalty based on Department procedure and it is not within his discretion to do otherwise. In other instances where it was not mandated and he felt suspension was warranted, he had to confer with the duty chief with respect to making or directing a suspension. Talamo stated that he did not feel this matter involving Respondent warranted a suspension. He explained that there were

no allegations of misconduct by the perpetrator of the crime and that the circumstances as outlined did not warrant a suspension. He felt a Schedule B- Command Discipline would be warranted.

Talamo admitted that there were occasions in the past where he did have to sign off on Command Disciplines for Respondent. One occasion involved Respondent reading a newspaper. Another incident was where Respondent failed to keep a prisoner under constant observation. Talamo recalled another occasion where Respondent had a defective holster and he instructed Respondent to get a new holster. At the start of Respondent's next tour, he still had not obtained a new holster. Talamo explained that he could have ordered a Command Discipline to be issued to Respondent for failure to comply with an instruction to replace his equipment. Instead, because Respondent rendered himself unable to perform patrol duties, he found another function for him on that date. He was assigned an administrative duty to clean the bathrooms. Talamo agreed that he felt that that function would motivate Respondent to get a new holster and return to his patrol duties.

Talamo stated that there were two other officers who rendered themselves "gunless" and he also assigned them to clean the bathrooms. He further explained that at the time he had no custodian and officers would volunteer to clean the bathrooms, and since he could not pay them overtime, they were reimbursed with time. These volunteer officers were supplemented with the three officers that he spoke of. Talamo elaborated that the officers never actually cleaned the bathrooms because the union promised to get new holsters which took place, and Respondent went to patrol.

Talamo acknowledged that he was deposed at a civil lawsuit regarding Respondent. He agreed that he stated during the deposition that he believed the punishment should fit the crime. He acknowledged that he looked at an appropriate punishment based on what the misconduct was. He said that he was satisfied with the investigation that took place in Respondent's case and he was given all of the facts with regard to the investigation. Talamo agreed that Respondent acted appropriately making an off duty arrest on March 15, 2006.

Talamo testified that with respect to the penalty that would be given to Respondent, he conferred with the Department Advocate's Office. He explained that although he wanted to adjudicate the matter at the command level, but he was not sure if the Advocate would agree with him with reference to the penalty. He immediately agreed that the recommended penalty was a Command Discipline with the forfeiture of five vacation days. Talamo stated that a recommendation including probation was never a consideration for him because he is not authorized to place a member of the service on probation.

During redirect examination, when asked what happened with the offer of the Command Discipline, Talamo testified that Respondent opted to reject any type of Command Discipline and chose a Department trial. This resulted in the issuance of Charges and Specifications.

During questioning by the Court, Talamo testified that initially Merensky was going to issue Respondent a Schedule A- Command Discipline. Talamo stated that he changed the Schedule A- Command Discipline to a Schedule B- Command Discipline and initialed it.

Respondent's Case

Respondent testified in his own behalf.

Respondent

Respondent is a 12-year member of the Department currently assigned to the 26 Precinct. Respondent testified that he works patrol but his current duty status is sick leave due to a line-of-duty injury. Prior to his sick leave duty status, he was full-duty on patrol. He stated that his prior assignments include the 104 Precinct, the 113 Precinct, Viper 6 as well as the 107 Precinct.

On March 5, 2006, Respondent testified that he was at a barbershop located on Kissena Boulevard while off-duty. He was getting his hair cut and the patron next to him had just finished and got up. As the patron was about to leave, he began looking for his cell phone and could not find it. Respondent stated that he finished getting his hair cut and assisted the patron looking for his cell phone. Respondent told the patron to retrace his steps and if he was unable to find his cell phone to return to the barbershop. Once the patron left, Respondent testified that he recalled that four to five young kids had entered the barbershop five to ten minutes before the patron arrived. Respondent said to the owner of the barbershop, Mikhaylov, that those kids probably had something to do with the cell phone. Mikhaylov informed him that he had a surveillance camera in the back, so they decided to view the surveillance camera. Prior to reviewing the surveillance camera, one of Mikhaylov's younger sons told Respondent that the kids were outside.

Respondent stated that he, Mikhaylov and Mikhaylov's son went outside to confront the kids. Respondent asked the kids to speak to them and he made inquiry about a cell phone. All of the kids stated that they did not know anything about a cell phone.

Respondent informed them that he was a police officer, and that if they did not bring back the cell phone, everyone would be arrested. One of the kids informed him that he found the cell phone. When Respondent inquired where it was located, the kid told him that the cell phone did not have a SIM card and he threw it in the bushes. Respondent asked the kid to retrieve the cell phone, so the kid left and returned with the cell phone. Respondent informed the kid that if he found the cell phone in the store, he should have asked who it belonged to, and he took the cell phone from the kid and went back into the barbershop.

Respondent reentered the barbershop with Mikhaylov and they discussed trying to reach the patron who lost his cell phone. Mikhaylov stated he did not know where he lived, but Respondent informed him that he should be returning because he told him to retrace his steps. Respondent stated that he waited a little while. In the meantime, Respondent stated that he looked at the surveillance tape. He explained that it was in fast motion but he could see the kids come into the store and one of the kids going toward a jacket lying on the couch. He said it was fast moving so he could not tell exactly what happened but he did see one of the kids go toward the coat and then all of them left the store at the same time. Respondent further explained that it took approximately 45 minutes to actually get the tape slowed down to the point where he could see the kid going into the coat pocket and taking the cell phone. Respondent said that what he observed regarding the kid was actually on the videotape and that he did not observe the videotape until after he had confronted the kids outside. He could not recall if the kid who retrieved the cell phone was the same one he saw on the videotape. He said that

there were four kids and he just could not recall. Respondent noted that the person who owned the cell phone did not return to the store while he was still there.

Respondent stated that he gave Mikhaylov specific instructions. He informed him that he had to leave because he had to go to a meeting at his children's school. He told Mikhaylov that the patron should be returning and when he returns to give him the cell phone. If the patron wanted to make a report, he told Mikhaylov to tell him to call 911 and make a report. Respondent told Mikhaylov that he would call later to make sure the patron received his cell phone.

Respondent said at no point during his encounter with the children did he use any force. He could not recall if he displayed his Department shield or Department identification card. He felt that he did not have probable cause to arrest the kid because the kid said he found the cell phone. He also acknowledged that at that point, he had not reviewed the video tape yet. He explained that when he was actually able to review the videotape it was 45 minutes later, it was getting dark and the kids were no longer in the area.

On March 15, 2006 Respondent stated that he was at the barbershop getting his hair cut when he observed the kid come into the store. The kid walked around a little bit and then sat next to him. He saw Respondent and said, "What's up?" Respondent said he asked the kid if he remembered him and the kid began to yell. He informed the kid that there was an open 61 [complaint] and that he should keep quiet. The kid advised Respondent that he could not do anything to him. Respondent told him that he was not going anywhere. Respondent testified that he learned about the open complaint because on March 5, 2006, he called Mikhaylov at the barbershop. Mikhaylov informed him that

the patron did come back to the store to get the cell phone. He told the patron about calling 911, the cops came to the shop, they viewed the videotape and they did a report. Respondent acknowledged that this was his follow-up to see what happened.

On March 15, 2006, Respondent testified that he did place the kid under arrest. He waited and asked someone to call 911 because he was holding the young man down. Respondent acknowledged that uniformed police officers arrived and assisted him in arresting and detaining the individual. Respondent agreed that he did not receive any discipline or Charges and Specifications for his action on March 15, 2006.

Respondent testified that he did not notify any supervisors about the incident on March 5, 2006 because he thought that the cell phone was just found property, that the guy was coming back for his cell phone and that once he received his cell phone that that would be the end of the incident. It was not until 45 minutes to an hour later, after reviewing the surveillance videotape that he observed that the cell phone had actually been taken from the patron's coat pocket. Respondent stated that he still would have needed to establish probable cause from the owner stating that the cell phone belonged to him. The patron was not there at the time.

Respondent acknowledged that he was offered a Command Discipline and the forfeiture of five vacation days, but he opted to reject that offer and proceed to trial. He explained that during his official Department interview, he explained exactly what happened in the presence of the duty captain, the platoon commander, Inspections and others who were present. Following the hearing, he stated that the inspector stopped him and told him he would let him go this time, but he had to say thank you sir. Respondent stated that he responded, "Thank you, sir." The inspector told him that he needed to say

it louder. Respondent assumed that he did not say it loud enough and then he was faced with discipline in this matter.

With respect to another matter, between the dates 2006 and September 2008, Respondent testified that there is a period where he registered his car in [REDACTED] but he lived in [REDACTED]. Respondent stated that ten years ago he lived in [REDACTED] [REDACTED]. He eventually moved [REDACTED]. Respondent stated that he was informed by his ICO that he insured his vehicle in one county and lived in another. He stated that he did not know how that happened. He explained that he lived in [REDACTED] for ten years, and then he got married and moved to [REDACTED] for five years. When he joined the Police Department in 1998 he was living in [REDACTED] and for the past 12 years, he had been receiving police parking permits. To obtain them he had to produce his registration and his driver's license at the same address. He explained that he had been producing them and receiving the permits for the past 12 years.

Respondent said that when he was notified by his ICO that the registration and driver's license were not the same, he was shocked. Respondent stated that he checked his license plate on his car and realized that the ICO was correct. He immediately notified the Department of Motor Vehicle and inquired as to how the change took place. He was advised by them that they had three addresses where he lived and there was a possibility that documents were sent to [REDACTED] by mistake. Respondent acknowledged that he forgot to ensure that his address matched his current registration. He stated that currently his cars are now in compliance with where he lives.

During cross-examination, Respondent was asked whether he viewed the video twice. He stated that he started to review the video the first time, but was called outside

by Mikhaylov's younger son. He further explained that the first time the video was going in fast motion, so he really did not get a chance to see very much. He acknowledged that he viewed the video on two occasions. Respondent admitted saying to Mikhaylov that the four or five individuals must have been involved with the missing cell phone. When asked to explain why he made that statement, Respondent said he was getting his haircut in the barbershop when the kids came in and immediately left, none of them got their hair cut. They sat for approximately five minutes and then they all walked out of the barbershop. He stated that it came to his mind that those kids were probably involved. Respondent stated that he viewed the video tape for approximately two or three minutes. The second time, he observed someone take a cell phone from a coat pocket, but he could not draw the conclusion that a crime had been committed.

Respondent acknowledged that during his official Department interview he stated that Mikhaylov's son did inform him that one of the youths was a thief. Respondent testified that he stated during that hearing that he "probably took the cell phone." Respondent was asked whether he said to the individual that he took the cell phone from a pocket and the Respondent replied, "No." Respondent was shown a statement from his official Department interview which stated:

"So I couldn't see him after the tape because it was going so fast.... At the same time, his son told me the kid is outside across the street...so I went across the street and I said to the man I told him I said um, you took the phone from some person's pocket, from a jacket. He denied it."

Respondent acknowledged that the statement was accurate. Respondent also acknowledged that he not only talked to the individual, but also spoke to the other four individuals who were across the street; and he identified himself as a police officer.

Respondent acknowledged that he told the individuals that everybody was going to be arrested, but eventually he was able to retrieve the cell phone. Respondent admitted that he took possession of the cell phone. Respondent acknowledged that he did not have probable cause to arrest anyone but he approached them anyway. He explained that what he did was make an open inquiry. He admitted that it was at that point that he reentered the barbershop and viewed the videotape a second time where he observed a kid take the cell phone from a coat pocket. He denied contacting 911 at that time. He also denied notifying the Department that he took possession of property. Respondent denied that he completed a Stop, Question and Frisk form for the four individuals that he stopped. He explained that he does not carry Stop, Question and Frisk reports while off-duty. He acknowledged that he did not notify the patrol supervisor in the precinct of occurrence.

#### FINDINGS AND ANALYSIS

##### Disciplinary Case No. 82404/06 Specification No. 1

Respondent stands charged herein in that on or about March 5, 2006, while off-duty, having been involved in a police incident at a location within the confines of the 107 Precinct known to the Department, did thereafter fail to remain at the scene of said incident as required and/or did fail to request the response of a patrol supervisor as required, in that Respondent left said location, after Respondent was advised by a person known to the Department that a larceny had taken place at that location, and after Respondent had taken police action in regard to that larceny.

Respondent is found Guilty in part. Evidence adduced at trial established that Respondent was at a barbershop getting his hair cut when a patron next to him announced

that his cell phone was missing. They looked around but could not find it. Respondent suggested to the patron to retrace his steps and then return to the store. Once the patron left, Respondent recalled that four or five young people entered the barbershop. They sat for about five minutes and then quickly left. None of them had their hair cut. Respondent thought they may be involved in the loss of the cell phone.

The barbershop owner, Mikhaylov informed Respondent that he had a surveillance video camera installed in the shop. As they began to review the video, one of Mikhaylov's sons informed them that the youths were outside. Respondent testified that he had not finished reviewing the videotape when he went outside to speak to the youths.<sup>1</sup> He acknowledged that he confronted the youths, advised them that if they took the cell phone they would all be arrested if it was not returned. One youth stated that he found a cell phone, but it did not have a SIM card, so he threw it in the bushes. Respondent instructed him to get the cell phone. The youth left and returned with a cell phone. Respondent retrieved it and gave it the store owner. Both Respondent and Mikhaylov testified that at the time the youths were confronted, the patron with the lost cell phone had already left the barbershop.

Respondent testified that he thought this was a case of found property. He thought that once the cell phone was found, it would be given to the store owner, who would return it to the patron and that would be the end of the incident. Respondent acknowledged that he was off-duty and never notified 911 about the incident. He never requested the response of a patrol supervisor nor prepared a Stop, Question and Frisk report pertaining to the youths that he detained. While the Court understands that

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<sup>1</sup> This testimony was consistent with Respondent's official Department interview. See Department Exhibit (DX) 1A/1B.

Respondent took police action while off-duty, once he made the decision to do that, he has to follow proper Police Department procedure. As Merensky testified to, Respondent could have simply called 911 to handle this matter and he would not have had to take any additional police action. But at the point that he decided to stop the youths, he had a duty to prepare a Stop, Question and Frisk report. Once he recovered the cell phone, he had a duty to complete paperwork with respect to it. Particularly since one of the youths stated that the cell phone did not have a SIM card. Respondent should have foreseen that this would later be an issue that needed to be addressed.

Respondent argued credibly that at the time he stopped the youths, he had not fully reviewed the surveillance videotape at the barber shop. It was not until after he confronted the youths, and the surveillance tape was slowed down, that he was actually able to see a male go into a coat pocket and take a cell phone. He further testified that he could not make an arrest at that point until the patron was able to identify the cell phone as his and that it was the one taken. While this goes to the larceny aspect of the Charge which this Court is not substantiating, it does not obviate Respondent's administrative obligations once he decided to take police action and stop the youths and retrieve the cell phone.

Accordingly, I find Respondent Guilty of failing to remain at the scene and request the response of a patrol supervisor.

Specification No. 2

Respondent stands charged herein in that on or about March 5, 2006, while off duty, he did wrongfully engage in conduct prejudicial to the good order, efficiency and

discipline of the Department by failing to take proper police action, in that Respondent, having been involved in a police incident at a location known to the Department within the confines of the 107 Precinct, did fail to effect a proper arrest of a juvenile known to the Department and/or did fail to detain and make proper notifications regarding a juvenile known to the Department and/or did fail to properly invoice property and/or did fail to prepare a Stop, Question and Frisk report after having detained a juvenile known to the Department.

Respondent is found Guilty in part. As stated above, once Respondent decided to take police action while off-duty, he had a duty to follow certain protocol. For one, he stopped the youths and failed to prepare a Stop, Question and Frisk report regarding the stop. Although Respondent testified that he was off-duty and did not carry such paperwork with him, had he contacted the precinct of occurrence and explained the stop and his need to complete said paperwork, a patrol supervisor could have properly handled the situation. Once Respondent was in possession of the cell phone, he had a duty to see that it was properly invoiced such that proper procedures were followed in returning the cell phone to the owner. Leaving the cell phone with the barbershop owner in the hopes that the patron would return there was not proper police action. Any number of things could have happened to the cell phone in the time it took for the patron to return to the barbershop, if he returned at all. In addition, once the patron attempted to obtain his cell phone from the station house (had it been properly invoiced) and realized that the SIM card was missing, he could have filed a police report at that time.

As previously stated, Respondent could not have effectuated an arrest of the juvenile at that time because he had not completely reviewed the surveillance videotape

and the patron had already left the store, so there was no verification that the cell phone retrieved belonged to him.

Accordingly, I found Respondent Guilty of failing to invoice property and prepare a Stop, Question and Frisk report.

Disciplinary Case No.85378/09

Specification No. 1

Respondent stands charged herein in that on or about and between 2006 and September 28, 2008 did wrongfully engage in conduct prejudicial to the good order, efficiency or discipline of the Department in that said Police Officer did maintain insurance for said Police Officer's personal vehicle using an address in [REDACTED] when in fact said Police Officer resided in [REDACTED].

Respondent pleaded Guilty to this Specification. He acknowledged that he lived in [REDACTED] until he married and moved to [REDACTED] for five years. He then relocated to [REDACTED] where he resided for ten years. He explained that every year he applied for a parking permit where he had to produce his registration for his vehicle. He stated that it was not until his ICO informed him that his license and registration did not match that he was aware of the problem. Respondent said the Department of Motor Vehicle (DMV) informed him they had three addresses for him and may have inadvertently put the wrong county on his license.

However, whether DMV made an error did not impact where Respondent chose to obtain insurance for his personal vehicle. Respondent acknowledged that he failed to check on where his vehicle was registered and insured.

Accordingly, Respondent having pleaded Guilty to Specification No. 1 is found Guilty of Specification No. 1.

Specification No. 2

Respondent stands charged herein in that on or about August 4, 2007, did wrongfully engage in conduct prejudicial to the good order, efficiency or discipline of the Department in that said Officer did file a claim for glass damage with said officer's insurance company, while insuring his vehicle in a County other than that in which said vehicle was predominately garaged.

The Assistant Department Advocate moved to dismiss Specification No. 2 pretrial on March 18, 2010.<sup>2</sup>

Accordingly, it is recommended that Department's motion to dismiss Specification No. 2 be granted.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See Matter of Pell v. Board of Education, 34 N.Y.2d 222 (1974). Respondent was appointed to the Department on July 1, 1998. Information from his personnel folder that was considered in making this penalty recommendation is contained in the attached confidential memorandum.

Respondent has been found Guilty of failing to remain at the scene, failing to request the response of a patrol supervisor, failing to properly invoice property and failing to prepare a Stop, Question and Frisk Report for juveniles detained. Respondent

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<sup>2</sup> At the pre-trial conference, all parties agreed that Specification No. 2 should be dismissed.

also pleaded Guilty to insuring his personal vehicle in [REDACTED] when he resided in [REDACTED]. The Assistant Department Advocate asked for a penalty of the forfeiture of 40 vacation days and one year dismissal probation. To support this penalty recommendation, she cited Disciplinary Case No. 79761/04. In that case, an 11 ½ -year member of the Department was found Guilty of failing to voucher arrest evidence and deliver the property to the desk officer. In that matter, the Respondent had arrested a burglary suspect and recovered property that belonged to the burglary victim. Rather than voucher the evidence, the Respondent in that matter, put the property in her locker and made only two attempts to return the property to the burglary victim. This was despite the fact that the Respondent had learned that the burglary victim came to the precinct looking to recover her burglarized property. It ended up the Respondent in that matter held on to the property for over ten months. The facts of that matter are not sufficiently similar to this case aside from the fact that both Respondents failed to invoice property.

I did not find Respondent in this matter Guilty of failing to make an arrest. He certainly did not hold on to the unvouchered property. Yet he had several administrative failures which included failing to voucher evidence, failing to prepare Stop, Question and Frisk reports for the four youths stopped, and failing to request the response of a patrol supervisor who could have enabled Respondent to perform these duties.

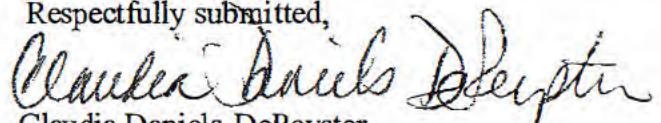
I do find that once Respondent learned that an open complaint was pending against the juvenile that he had stopped on March 5, 2006 regarding the theft of a cell phone, that the next time Respondent saw the juvenile, Person A, which was March 15, 2006, he took him into police custody and arrested him despite being off-duty. The

Department found that Respondent did not engage in any misconduct on that latter date by arresting Person A. Respondent's testimony was also consistent with what he stated in his official Department interview (DX 1A/1B).

However, given the number of administrative violations that Respondent has been found Guilty of, coupled with his performance record with the Department, a period of monitoring is warranted to ensure that this type of conduct will not be repeated. This tribunal has long held that a period of dismissal probation "gives Respondent the benefit of another chance to show that he can be an asset to this Department while affording the agency the prerogative of ending his employment if he does not." (See Disciplinary Case Nos. 75596/00 and 75441/00).

Accordingly, this Court recommends that Respondent be DISMISSED from the New York City Police Department, but that the penalty of dismissal be held in abeyance for a period of one year pursuant to section 14-115 (d) of the Administrative Code, during which time he remains on the force at the Police Commissioner's discretion and may be terminated at any time without further proceedings. I further recommend that Respondent forfeit 30 vacation days.

Respectfully submitted,

  
Claudia Daniels-DePeyster

Assistant Deputy Commissioner – Trials



POLICE DEPARTMENT  
CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM  
POLICE OFFICER RICARDO RICHARDS  
TAX REGISTRY NO. 921706  
DISCIPLINARY CASE NOS. 82404/06 & 85378/09

In 2010, Respondent received an overall rating of 3.0 "Competent" on his annual performance evaluation. In 2009 and 2008, he received a rating of 4.0 "Highly Competent." Respondent has received one Excellent Police Duty Medal in his career.

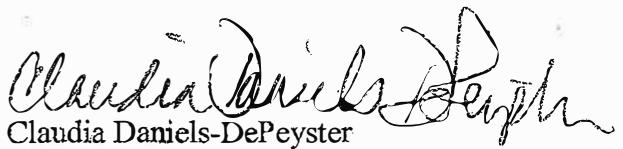
[REDACTED]

On August 17, 2001, Respondent received disciplinary charges for 1) while off-duty failing to properly identify himself as an NYPD officer when involved in a confrontation; 2) fail/neglect to comply with said direction; 3) resisted efforts by Department members of the service to disarm and handcuff him. On December 29, 2003 Respondent was found Not Guilty after a Department trial.

On August 2, 2004, Respondent received disciplinary charges for 1) leaving a prisoner unattended; 2) fail to maintain his Activity Log. Respondent was found Guilty of both charges after a Department trial. On March 18, 2005, Respondent received disciplinary charges for 1) failing to remain alert at his assigned post. Respondent was found Guilty after a Department trial. On July 20, 2005, Respondent received disciplinary charges for 1) being absent from said assignment and being observed off-post; 2) failed to perform assigned duties. Respondent was found Guilty of Specification No. 1 and Specification No. 2 was dismissed. On February 9, 2006, Respondent received disciplinary charges for 1) failing to perform his assigned duties; 2) absent from assignment and observed off-post. Respondent was found Guilty of Specification No. 1 and Specification No. 2 was dismissed. To resolve these four disciplinary cases after trial, on November 8, 2006 as per the Police Commissioner, Respondent was to forfeit 25 vacation days and not be the subject of any future transfer without the explicit approval of the Police Commissioner.

On December 15, 2005, Respondent received a negative performance evaluation which was low in performance areas and behavioral dimensions. From March 31, 2006-September 30, 2007, Respondent was placed in Level II Discipline Monitoring for continued poor performance. On November 4, 2009 to present, Respondent was placed in Level II Discipline Monitoring based on the Charges and Specifications he received and his overall record.

For your consideration.



Claudia Daniels-DePeyster  
Assistant Deputy Commissioner Trials